

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

LaRonda Phox,)
v. Plaintiff,)
National Marketing Resources, et al.,) No. 08-0202-CV-W-FJG
Defendants.)

ORDER

Pending before the Court are (1) Plaintiff's Application for Leave to File Action without Payment of Fees (Doc. No. 1); and (2) Plaintiff's Application for Appointment of Counsel (Doc. No. 3). Together with plaintiff's motions is plaintiff's Affidavit of Financial Status (Doc. No. 2).

I. Application for Leave to File Action without Payment of Fees (Doc. No. 1)

Pursuant to 28 U.S.C. § 1915, this Court may authorize the commencement or prosecution of any suit without prepayment of fees when an applicant files an affidavit stating that he is unable to pay the costs of the lawsuit, and the Court determines that the lawsuit is not frivolous or malicious.

The Court must exercise its discretion in determining whether an applicant is sufficiently impoverished to qualify under § 1915. Cross v. Gen. Motors Corp., 721 F.2d 1152, 1157 (8th Cir. 1983). Such showing of poverty is sufficient if the applicant would become completely destitute or be forced to give up the basic necessities of life if required to pay the costs of the lawsuit. Adkins v. E.I. Du Pont De Nemours & Co., 335 U.S. 331, 339 (1948); Local Rule 83.7(a) (1999). A review of plaintiff's affidavit reveals that it is questionable whether she is sufficiently impoverished to qualify under § 1915.

However, even assuming plaintiff was sufficiently impoverished, the Court's inquiry

does not end there. Instead, the Court “shall dismiss” cases filed in forma pauperis “at any time if the court determines that . . . the action . . . (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B).

In the present matter, plaintiff (a Missouri resident) has named defendants National Marketing Resources (NMR), NMR-Myebiz, Myebiz, uSight, The Summit Group, Professional Marketing (PMI), and Links 4 Trades. Notably, defendant NMR-Myebiz is alleged to be a resident of Clay County, Kearney, Missouri. Plaintiff claims that the various defendants breached contracts with her, provided her defective products, and made fraudulent misrepresentations.

After a review of plaintiff’s proposed complaint, it is clear that plaintiff’s case is frivolous and fails to state a claim upon which relief can be granted. In particular, federal courts are courts of limited jurisdiction, and this Court does not have subject matter jurisdiction unless plaintiff’s claims present a federal question (28 U.S.C. § 1331) or a controversy between citizens of different states where the amount in controversy exceeds the sum of \$75,000 (28 U.S.C. § 1332). Plaintiff’s complaint does not present a federal question; instead, it appears to be a state law contract/fraudulent misrepresentation claim. Further, defendant NMR-Myebiz appears to be a citizen of the same state as plaintiff.¹ Therefore, plaintiff’s claim is frivolous within the meaning of 28 U.S.C. § 1915(e)(2)(B).

Therefore, for the foregoing reasons, plaintiff’s Application for Leave to File Action without Payment of Fees (Doc. No. 1) is **DENIED**.

II. Motion to Appoint Counsel (Doc. No. 3)

Plaintiff has requested appointment of counsel. As the Court has found that plaintiff’s proposed complaint is frivolous and fails to state a claim upon which relief may

¹Based on the facts alleged by plaintiff, it is also highly questionable whether the amount in controversy exceeds the sum of \$75,000.

be granted, plaintiff's motion for appointment of counsel (Doc. No. 3) will be **DENIED**.

III. Conclusion

Accordingly, it is hereby **ORDERED** that:

1. Plaintiff's Motion to Proceed In Forma Pauperis (Doc. No. 1) is **DENIED**;
2. Plaintiff's Motion to Appoint Counsel (Doc. No. 3) is **DENIED**; and
3. This case is dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B). This dismissal is

without prejudice to the filing of a paid complaint.

IT IS FURTHER ORDERED that the Clerk of the Court send a copy of this order via regular and certified mail to plaintiff at the following address:

LaRonda Phox
3921 Norton Avenue
Kansas City, MO 64130

IT IS SO ORDERED.

Date: 3/24/08
Kansas City, Missouri

S/ FERNANDO J. GAITAN, JR.
Fernando J. Gaitan, Jr.
Chief United States District Judge